

No. 98-7591-CSX

Title: Ronald Dean Lowe, Petitioner
v.
Marcus Pogue, et al.

Docketed:
January 11, 1999

Court: Supreme Court of Oklahoma

Entry Date

Proceedings and Orders

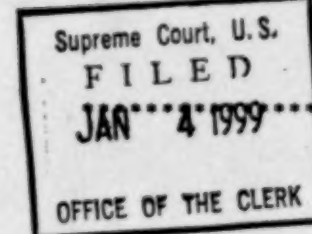
Jan 4 1999	Petition for writ of certiorari and motion for leave to proceed in forma pauperis filed. (Response due February 10, 1999)
Jan 4 1999	Motion of petitioner for leave to proceed in forma pauperis filed.
Feb 25 1999	DISTRIBUTED. March 19, 1999
Mar 22 1999	REDISTRIBUTED. March 26, 1999
Mar 29 1999	Motion of petitioner for leave to proceed in forma pauperis DENIED. Rule 38.1. Petitioner is allowed until April 19, 1999, within which to pay the docketing fee required by Rule 38(a) and to submit a petition in compliance with Rule 33.1 of the Rules of this Court. Dissenting statement by Justice Stevens. Opinion per curiam. (Detached opinion.)

1 p

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY
AT THE TIME OF FILMING. IF AND WHEN A
BETTER COPY CAN BE OBTAINED, A NEW FICHE
WILL BE ISSUED.

ORIGINAL PAGINATION IS NOT CONTINUOUS.



98-7591 ORIGINAL

CASE NO. :

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

RONALD DEAN LOWE,

Petitioner,

versus

MARCUS POGUE and JAMES THORNLEY,

Respondents.

ON A PETITION FOR A WRIT OF CERTIORARI FROM THE

SUPREME COURT

FOR THE STATE OF OKLAHOMA

REGARDING A CIVIL TORT ACTION

PETITION FOR A WRIT OF CERTIORARI

Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

36 pp

QUESTIONS PRESENTED

The Petitioner, Ronald Dean Lowe, offers for consideration the following and heretoeafter given issues in the current petition for a writ of certiorari:

(01). Did the Supreme Court, for the State of Oklahoma, improperly deny the application for original jurisdiction in the matter ostensibly based upon the erroneous findings detailed hereafter:

(A). That the Petitioner has another state court of competent trial jurisdiction available. Compare Draper v. State, 621 P.2d 1142 (Okla. 1980).

(B). That a state "civil rights" action challenging the constitutionality of a state criminal and civil statute(s) is ipso facto duly identical to a federal "civil rights" action.

(C). That the pertinent federal precedent adjudicating a state statute constitutional are necessarily binding upon a state district court or state appellate court and, thus, precludes a state civil or criminal determination of constitutionality.

(02). Is dismissal on the basis of a request for class-action status proper even in situations where the Petitioner would not be eligible to duly litigate the action for the entire class?

LIST OF PARTIES

The Petitioner, Ronald Dean Lowe, states that all interested parties to or in the current petition for a writ of certiorari appear in the caption of the case or litigation on the cover page.

TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF APPENDICES	ii
TABLE OF AUTHORITY	iii
TABLE OF STATUTES AND RULES	iv
PETITION FOR A WRIT OF CERTIORARI	01
OPINIONS BELOW	01
JURISDICTION	02
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	03
01. OKLAHOMA CONSTITUTION--JURISDICTION OF SUPREME COURT	03
02. OKLAHOMA SUPREME COURT RULES	03
03. OKLAHOMA CRIMINAL PROCEDURE	04
04. OSBI DNA OFFENDER DATABASE	04, 05
STATEMENT OF THE CASE	06
REASONS FOR GRANTING THE PETITION	07
01. STATE-WIDE EFFECT	07
02. APPLICABLE CIVIL PROCEDURE	07
03. DISPARITY OF STATE AND FEDERAL ACTIONS	07
CONCLUSIONS	09
SIGNATURE PAGE	09

TABLE OF APPENDICES

<u>APPENDIX</u>	<u>DESCRIPTION</u>
A	Order (Denying Original Jurisdiction) (Supreme Court of Oklahoma) (3 November 1998)
B	Respondent's Response to Petitioner's Application ... (Supreme Court of Oklahoma) (28 January 1998)
C	Petition (Supreme Court of Oklahoma) (23 December 1997)

TABLE OF AUTHORITY

DRAPER V. STATE

621 P.2d 1142 (Okla. 1986) 07

HUDSON V. PALMER

468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984) 08

LOWE V. MONARD

942 P.2d 732 (Okla. 1997) 07

PARRATT V. TAYLOR

451 U.S. 527, 101 S.Ct. 1908, 68 L.Ed.2d 420 (1981) 08

PHILLIPS V. WISEMAN

857 P.2d 50 (Okla. 1993) 08

TIEMANN V. TUL-CENTER, INC.

18 F.3d 851 (10th Cir. 1994) 08

WILLBOURN V. CITY OF TULSA

721 P.2d 803 (Okla. 1986) 08

TABLE OF STATUTES AND RULES

O.S.A., 1981, Constitution Article 7, Section 4 03

O.S.A., 1998 C.A.P.P., Title 12, Chapter 15, Appendix 1,
Oklahoma Supreme Court Rules, Rule 1.191(b) 04

O.S.A., 1998 C.A.P.P., Title 21, Section 991a 04

O.S.A., 1998 C.A.P.P., Title 74, Section 150.27a 05

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Ronald Dean Lowe, herewith respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

The opinion of the highest state court to review the merits of the matter or litigation appears at Appendix A and is unpublished.

JURISDICTION

The date on which the Supreme Court, for the State of Oklahoma, decided the present case or litigation was on the 03rd day of November 1998. Further, a copy of that decision appears at Appendix A.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Petitioner, Ronald Dean Lowe, articulates that the current litigation or matter involves the following constitutional and statutory provisions:

01. OKLAHOMA CONSTITUTION—JURISDICTION OF SUPREME COURT

'The appellate jurisdiction of the Supreme Court shall be coextensive with the State and shall extend to all cases at law and in equity; except that the Court of Criminal Appeals shall have exclusive appellate jurisdiction in criminal cases until otherwise provided by statute and in the event there is any conflict as to the jurisdiction, the Supreme Court shall determine which court has (due) jurisdiction and such determination shall be final. The original jurisdiction of the Supreme Court shall extend to a general superintending control over all inferior courts and all Agencies, Comissions and Boards created by law. The Supreme Court, Court of Criminal Appeals, in criminal matters and all other appellate courts shall have power to issue, hear and determine writs of habeas corpus, mandamus, quo warranto, certiorari, prohibition and such other remedial writs as may be provided by law and may exercise such other and further (just) jurisdiction as may be conferred by statute.....' Oklahoma Statutes Annotated, 1981, Constitution Article 7, Section 4. (Emphasis supplied).

02. OKLAHOMA SUPREME COURT RULES

'The application and petition (to assume original jurisdiction) may be (duly)

combined in the same instrument and shall state concisely:

- (1) the reasons why such action or proceeding is brought in the Supreme Court instead of another court of competent jurisdiction and why original jurisdiction should be assumed,
- (2) the nature of the remedy or relief sought, and
- (3) the facts entitling the petitioner to the remedy or relief sought.'

Oklahoma Statutes Annotated, 1998 Cumulative Annual Pocket Part ("C.A.P.P."), Title 12, Chapter 15, Appendix 1, Oklahoma Supreme Court Rules, Rule 1.191(b).

03. OKLAHOMA CRIMINAL PROCEDURE

'A person convicted of an offense as provided in Section 7115 of Title 10 of the Oklahoma Statutes of Section 645, 650.2, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888, 1114, subsection B of Section 1021, 1021.2, 1021.3, 1087, 1088, 1123, 1173, 1192.1 of Title 21, of the Oklahoma Statutes or a person convicted of any felony who has a prior conviction for an offense listed in this subsection shall submit to deoxyribonucleic acid testing for law enforcement identification purposes in accordance with Section 150.27a of Title 7 of the Oklahoma Statutes and the rules promulgated by the Oklahoma State Bureau of Investigation for the OSBI DNA Offender Database.' Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 22, Section 991a.

04. OSBI DNA OFFENDER DATABASE

'There is hereby established within the Oklahoma State Bureau of Investigation the OSBI DNA Offender Database for the purpose of collecting and storing blood and samples, analyzing and typing of the genetic markers contained in or derived from DNA and maintaining the records and samples of DNA of individuals convicted of violation of Section 7115 of Title 10 of the Oklahoma Statutes of Section 645, 650, 650.2, 650.5, 650.6, 650.7, 650.8, 651, 652, 701.7, 701.8, 711, 832, 885, 888, 1114, subsection B of Section 1021, 1021.2, 1021.3, 1087, 1088, 1123, 1173 or 1192.1 of Title 21 of the Oklahoma Statutes and of individuals required to register pursuant to the Sex Offenders Registration Act. The purpose of this database is the detection or exclusion of individuals who are subjects of the investigation or prosecution of sex-related crimes, violent crimes, or other crimes in which biological evidence is recovered, and such information shall be used for no other purpose.' Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 74, Section 150.27a(A).

STATEMENT OF THE CASE

The Petitioner, Ronald Dean Lowe, an inmate under the direction and control of the Department of Corrections (DOC) for the State of Oklahoma, brings the current petition for a writ of certiorari to the Supreme Court of the United States in a state of penury or in forma pauperis and via self-representation or pro se. Currently, the Petitioner is imprisoned or detained at the R.B. "Dick" Conner Correctional Center (D.C.C.C.) situated or located in the municipality or city of Hominy, within the State of Oklahoma.

This document is relevant to the conviction of the Petitioner for the alleged or putative crime of two (2) counts of murder in the first degree, in violation of Oklahoma Statutes Annotated, 1998 C.A.P.P., Title 21, Section 701.7. State v. Lowe, jury returns guilty verdicts, Case Number CRF-93-111 (District Court of Pottawatomie County, 14 September 1993).

REASONS FOR GRANTING THE PETITION

01. STATE-WIDE EFFECT

The Supreme Court, for the State of Oklahoma, has decided that the original jurisdiction should be assumed under the doctrine of publici juris for matters having statewide concern or effect. See Draper v. State, 621 P.2d 1142, 1145 (Okla. 1980).

Certainly, the present litigation would, in theory, disrupt the entire state criminal judicial system and the operation of the OSBI.

02. APPLICABLE CIVIL PROCEDURE

In a matter to assume original jurisdiction, the Supreme Court properly should be bound to the applicable Oklahoma Statutes and legal precedent which the Court employed to determine that a trial court may not return civil petition filed by inmate appearing pro se on the ground that the petition failed to state a claim. Lowe v. Monard, 942 P.2d 732, 733 (Okla. 1997).

03. DISPARITY OF STATE AND FEDERAL ACTIONS

'(T)he state Government Tort Claims Act and 42 U.S.C. Section 1983 provide a "double-barreled system", and that escaping liability under one does not necessarily mean that a party also escapes liability under the other.' Phillips

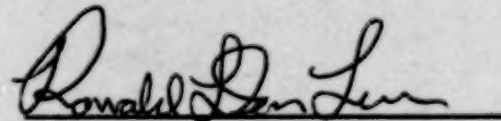
v. Wiseman, 857 P.2d 50, 52 (Okla. 1993). Citing Willbourn v. City of Tulsa, 721 P.2d 803, 805 (Okla. 1986). See Tiemann v. Tul-Center, Incorporated, 18 F.3d 851, 853 (10th Cir. 1994). Accord Parratt v. Taylor, 451 U.S. 527, 101 S. Ct. 1908, 68 L.Ed.2d 420 (1981), reversed in part, Daniels v. Williams, 474 U.S. 327, 106 S.Ct. 662, 88 L.Ed.2d 662 (1986); and Hudson v. Palmer, 468 U.S. 517, 104 S.Ct. 3194, 82 L.Ed.2d 393 (1984).

Thusly, the adjudication of the same or similar causes of action by a federal district court or circuit court of appeals does not ipso facto prevent and/or foreclude the adjudication of the current litigation by a state court. Ergo, the perfunctory denial to assume original jurisdiction was improper.

CONCLUSIONS

The Petitioner, Ronald Dean Lowe, hereby respectfully entreaties the Supreme Court of the United States to forthwith sustain and grant the current petition for a writ of certiorari.

Respectfully submitted,

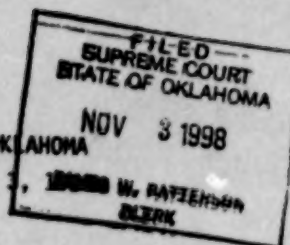
A handwritten signature in cursive script, appearing to read "Ronald Dean Lowe", is written over a horizontal line.

Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

Dated : 29 December 1998

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA
TUESDAY, NOVEMBER 3, 1998



APPENDIX B

THE CLERK IS DIRECTED TO ISSUE THE FOLLOWING ORDERS:

89,637 In the Matter of the Death of Earl Garland.
Darlene Mae Garland v. Pilgrim's Pride and The Workers' Compensation Court.
Rehearing denied.
CONCUR: Kauger, C.J., Summers, V.C.J., Hodges, Lavender, Simms, Hargrave, Opala, Watt, JJ.
NOT PARTICIPATING: Wilson, J.

89,725 In the Matter of the Appeal of Kenneth Davis from a Decision of the Board of Adjustment of the City of Tulsa, Oklahoma, BOA Case No. 17515.
Kenneth W. Davis et al. v. The Board of Adjustment of the City of Tulsa, Oklahoma et al.
Certiorari denied.
CONCUR: Summers, V.C.J., Hodges, Simms, Hargrave, Opala, Wilson, JJ.
DISSENT: Lavender, Watt, JJ.
NOT PARTICIPATING: Kauger, C.J.

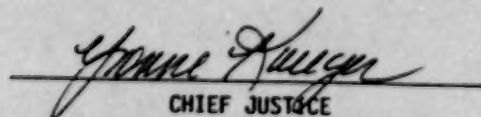
89,759 John D. Schuler v. Hambrick-Ferguson, Inc.
Certiorari denied.
All Justices concur.

89,938 In the Matter of the Estate of Lillian Salyer.
Carolyn Jane Salyer and Brad Salyer v. Deann Lindsey, successor administratrix of the Estate of Lillian Salyer.
Certiorari denied.
CONCUR: Kauger, C.J., Summers, V.C.J., Hodges, Lavender, Simms, Hargrave, Opala, Watt, JJ.
NOT PARTICIPATING: Wilson, J.

90,444 Robert Butler v. Construction Design, own risk and The Workers' Compensation Court.
Certiorari denied.
CONCUR: Kauger, C.J., Summers, V.C.J., Hodges, Lavender, Simms, Hargrave, Wilson, Watt, JJ.
CONCURS IN DEFERENCE TO STARE DECISIS: Opala, J.

90,574 Ronald Dean Lowe v. Marcus Pogue and James Thornley.
Application to assume original jurisdiction is denied.
All Justices concur.

90,668 Onix Gamabiel Perez Rodriguez and Maria Isabel Alberto, individually and as parents and friends of Onix Edgardo Perez Alberto, a minor v. New Holland North America, Inc., a Pennsylvania corporation, Steve Cusack, individually and d/b/a Cusack Equipment Company et al.
Certiorari denied.
All Justices concur.


CHIEF JUSTICE

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

RONALD DEAN LOWE,)
)
Petitioner,)
vs.) No. 90,574
)
MARCUS POGUE and JAMES THORNLEY,)
)
Respondents.)

RESPONDENTS' RESPONSE TO PETITIONER'S APPLICATION
TO ASSUME ORIGINAL JURISDICTION

The Attorney General of the State of Oklahoma, W.A. Drew Edmondson, on behalf of Respondents Marcus Pogue and James Thornley, submits the following Response to Petitioner's Application to Assume Original Jurisdiction.

SUMMARY OF THE RECORD

Petitioner Lowe brings this action seeking to have this Court declare an Oklahoma statute unconstitutional. Respondents assert that the statute is constitutional. The statute establishing the Oklahoma State Bureau of Investigation DNA Offender Database became effective on July 1, 1996. Okla. Stat. tit. 74, § 150.27a; Okla. Stat. tit. 22, § 991a. Section 150.27a mandates DNA testing of blood samples from inmates convicted of violating certain sections of Title 21 of the Oklahoma Statutes. Presumably, Petitioner was convicted of one of the enumerated crimes listed in § 150.27 and has had a blood sample taken for the Database.

PROPOSITION I

PETITIONER HAS FAILED TO SHOW THAT THIS COURT
SHOULD ASSUME ORIGINAL JURISDICTION IN THIS
CASE.

Article 7 § 4 of the Constitution of Oklahoma governs the jurisdiction of this Court. The Article states in relevant part:

The appellate jurisdiction of the Supreme Court shall be coextensive with the State and shall extend to all cases at law and in equity. . . . The appellate and the original jurisdiction of the Supreme Court and all other appellate courts shall be invoked in the manner provided by law.

Okla. Const. art. 7, § 4. Rule 1.191 of the Oklahoma Supreme Court Rules specifically states that applications to assume original jurisdiction shall state concisely:

- (1) the reasons why such action or proceeding is brought in the Supreme Court instead of another court of competent jurisdiction and why original jurisdiction should be assumed,
- (2) the nature of the remedy or relief sought, and
- (3) the facts entitling the petitioner to the remedy or the relief sought.

Okla. Sup. Ct. R. 1.191(b).

Petitioner has wholly failed to justify his request for this Court's assumption of original jurisdiction to consider his request for prohibition. He has set forth no valid reason why his Petition was filed with this Court instead of with another court of competent jurisdiction. In fact, Petitioner has attached to his Application a Complaint that he has filed in the United States District Court for the Eastern District of Oklahoma in which he has raised the same issues challenging the constitutionality of the same Oklahoma statute. In addition, as Respondents submit in Propositions II-V, no basis exists for finding that the statute is unconstitutional.

Petitioner has failed to demonstrate why this Court should assume original jurisdiction of this matter. Therefore, this Application should be dismissed.

PROPOSITION II

PETITIONER HAS FAILED TO SHOW THAT HIS FOURTH
AMENDMENT RIGHTS WERE VIOLATED.

Should the Court assume original jurisdiction in this matter, the Court should find that the statute is constitutional. Defendants note that a state statute is presumed constitutional. Fraternal Order of Police Lodge No. 165 v. City of Choctaw, 933 P.2d 261, 266 (Okla. 1996). Additionally, Petitioner is apparently attempting to bring this action as a class action. Title 12 O.S. § 2023 has numerous requirements that must be met before an action can proceed as a class

action. Petitioner does not list those requirements or explain why this action can only proceed as a class action. Since the burden is on Petitioner to satisfy all of the statutory requirements, his failure to explain in detail why this action should be a class action warrants that the Court not certify this action as a class action. See First Life Assurance Co. v. Mountain, 848 P.2d 1177, 1178-79 (Okla. Ct. App. 1993).

Petitioner first asserts that the statute is unconstitutional because it violates his Fourth Amendment rights prohibiting unreasonable searches and seizures. The Tenth Circuit held that similar Colorado and Kansas statutes requiring blood samples from inmates for DNA databases did not violate the Fourth Amendment. Schlicher v. (NFN) Peters, I & I, 103 F.3d 940, 943 (10th Cir. 1996); Boling v. Romer, 101 F.3d 1336, 1340 (10th Cir. 1996).

In Schlicher, the Court upheld a Kansas statute that required blood and saliva samples from certain convicted felons for use by the Kansas Bureau of Investigation for DNA analysis. Schlicher, 103 F.3d at 943. In Boling, the Court upheld a Colorado statute that required inmates convicted of sexual assault to provide the state with DNA samples before their release on parole. The results of the DNA analysis are filed and maintained by the Colorado bureau of investigation. Boling, 101 F.3d at 1339.

The Court in Boling held that obtaining and analyzing DNA from convicted inmates is a reasonable search and seizure in light of inmates' diminished privacy rights, the minimal intrusiveness of the testing, and the legitimate government interest in investigating and prosecuting future crimes by using DNA in a manner like the use of fingerprints. Id. at 1340. In Schlicher, the Court held that the taking of the blood from convicted inmates for DNA analysis pursuant to the statute did not violate the Fourth Amendment's prohibition against unreasonable searches and seizures. Schlicher, 103 F.3d at 943. Therefore, Petitioner's claim that taking his blood violates his Fourth Amendment rights is without merit.

PROPOSITION III

PETITIONER HAS FAILED TO SHOW THAT HIS FOURTEENTH AMENDMENT PRIVACY RIGHTS WERE VIOLATED.

Petitioner asserts that the statute is unconstitutional because it violates his Fourteenth Amendment right of privacy. The genetic information that comes from DNA testing is similar to fingerprinting, and accused persons routinely provide fingerprints when they are "booked" regardless of whether the crime evidence includes fingerprints. Rise v. Oregon, 59 F.3d 1556, 1559-60 (9th Cir. 1995), cert. denied, 116 S. Ct. 1554 (1996). Inmates have less privacy expectations in their identifying genetic information than free persons. Id. at 1560. See Jones v. Murray, 962 F.2d 302, 306-07 (4th Cir. 1992), cert. denied, 506 U.S. 977 (1992) (inmates have less privacy rights and thus Virginia statute mandating blood samples from convicted felons for DNA bank does not violate the Fourth Amendment). Prisoners have a reduced expectation of privacy in their bodies because they are incarcerated. Bell v. Wolfish, 441 U.S. 520, 556 (1979); Dunn v. White, 880 F.2d 1188, 1194-95 (10th Cir. 1989), cert. denied, 493 U.S. 1059 (1990). In addition, blood tests do not "infringe significant privacy interests." Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 625 (1989).

Taking a blood sample for a DNA database is minimally intrusive and is reasonable in light of inmates' diminished privacy rights. Boling v. Romer, 101 F.3d 1336, 1340 (10th Cir. 1996). The statute at issue does not violate Petitioner's privacy rights because as an inmate, he has diminished privacy rights and taking a sample of his blood is a minimal intrusion. Therefore, Petitioner has failed to show that the statute violates his privacy rights.

PROPOSITION IV

PETITIONER HAS FAILED TO SHOW THAT HIS FOURTEENTH AMENDMENT DUE PROCESS RIGHTS WERE VIOLATED.

Petitioner asserts that the statute violates his Fourteenth Amendment due process rights. Taking a blood sample for criminal investigation purposes, when done properly, does not offend the Due Process Clause. Breithaupt v. Abram, 352 U.S. 432, 436-37 (1957). A hearing is not required before obtaining a blood sample because a simple, medically acceptable blood test does not implicate the Due Process Clause. Rise v. Oregon, 59 F.3d 1556, 1562-63 (9th Cir. 1995), cert. denied, 116 S. Ct. 1554 (1996); see Boling v. Romer, 101 F.3d 1336, 1340-41 (10th Cir. 1996). Therefore, Petitioner has failed to show that the statute violates his due process rights.

PROPOSITION V

PETITIONER HAS FAILED TO SHOW THAT HIS FOURTEENTH AMENDMENT EQUAL PROTECTION RIGHTS WERE VIOLATED.

Petitioner asserts that the statute violates his Fourteenth Amendment equal protection rights. Petitioner has not shown that persons convicted of certain crimes are members of a suspect class. See Lustgarden v. Gunter, 966 F.2d 552, 555 (10th Cir. 1992), cert. denied, 506 U.S. 1008 (1992). Freedom from a blood test is not a fundamental right. Skinner v. Railway Labor Executives' Ass'n, 489 U.S. 602, 625-26 (1989); Schmerber v. California, 384 U.S. 757, 771 (1966). Therefore, the statute must be rationally related to a legitimate state interest in order to withstand constitutional scrutiny. McGinnis v. Royster, 410 U.S. 263, 270 (1973); Keeton v. Oklahoma, 32 F.3d 451, 452 (10th Cir. 1994); Lustgarden, 966 F.2d at 555. Oklahoma's interest in advancing law enforcement is significant and the statute is narrowly drawn to serve that interest. See Boling v. Romer, 101 F.3d 1336, 1341 (10th Cir. 1996); Vanderlinden v. Kansas, 874 F.Supp. 1210, 1217 (D. Kan. 1995); Washington v. Olivas, 856 P.2d 1076, 1087 (Wash. 1993) (Washington statute requiring DNA testing for convicted violent or sex offenders does not deny

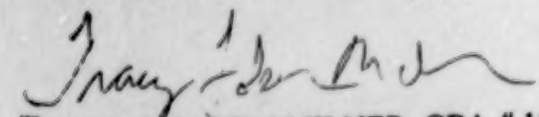
equal protection.). Therefore, Petitioner has failed to show that the statute violates his equal protection rights.

CONCLUSION

Petitioner has failed to show that the statute violates any of his constitutional rights. Thus the Court should either refuse to assume original jurisdiction or find that the statute is constitutional.

Respectfully submitted,

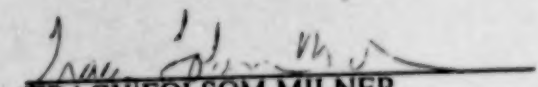
W.A. DREW EDMONDSON
ATTORNEY GENERAL OF OKLAHOMA


TRACY FOLSOM MILNER, OBA # 16113
ASSISTANT ATTORNEY GENERAL
4545 N. Lincoln Blvd., Suite 260
Oklahoma City, OK 73105
(405) 521-1274
Fax (405) 528-1867

CERTIFICATE OF MAILING

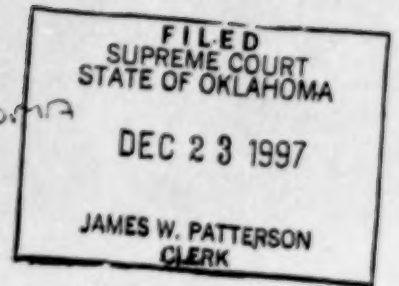
I certify that on the 28th day of January, 1998, I mailed a true and correct copy of the foregoing document to:

Ronald Dean Lowe #219027
Dick Conner Correctional Center
P.O. Box 220
Hominy, OK 74035-0220


TRACY FOLSOM MILNER

APPENDIX C

SUPREME COURT
FOR THE STATE OF OKLAHOMA



RONALD DEAN LOWIE,

PETITIONER

VS.

MARCUS ROGUE AND JAMES THORLEY,

RESPONDENTS.

CASE NO. :

30374

PETITION

COMES NOW THE PETITIONER, RONALD DEAN LOWIE, AND HEREWITH
RESPECTFULLY SUBMITS TO THE SUPREME COURT, FOR THE STATE OF
OKLAHOMA, THE FEDERAL CIVIL RIGHTS COMPLAINT, PURSUANT TO
42 U.S.C. § 1983, DOCKETED IN THE CASE OF LOWIE V. ROGUE
AND THORLEY, IN THE UNITED STATES DISTRICT COURT, FOR
THE EASTERN DISTRICT OF OKLAHOMA, CASE NUMBER CU-97-0939-S,
ON THE 22ND DAY OF JULY 1997, AS THE PETITION IN THE
CURRENT STATE LITIGATION. SEE ATTACHMENT A.

WHEREFORE, THE PETITIONER, RONALD DEAN LOWIE, HEREBY
RESPECTFULLY ENTREATS THE SUPREME COURT, FOR THE STATE

OF OKLAHOMA, TO ACCEPT THE CURRENT LEGAL DOCUMENT,
WITH THE ATTACHED FEDERAL CIVIL RIGHTS COMPLAINT, AS
THE REQUESTED PETITION IN THE HEREIN PROPOSED ORIGINAL
JURISDICTION LITIGATION

RESPECTFULLY SUBMITTED,

Ronald Dean Lowe

RONALD DEAN LOWE
WARRIE NO. 219027
PRO SE LITIGANT
O.C.C.
P.O. BOX 220
HOMER, OK 74033-0220

DATED: 25 DECEMBER 1997

CERTIFICATE OF SERVICE

I CERTIFY THAT ON THE 22ND DAY OF DECEMBER 1997 THAT I
MAILED A PHOTOCOPY OF THE CURRENT PLEADING TO

DISTRICT COURT OF ADAMS COUNTY
ATTN: MR. JAMES THURMOND
DISTRICT ATTORNEY
202 EAST COURT STREET
ADAMS, OK 74525

DEPARTMENT OF CORRECTIONS
ATTN: MR. VINCENT KNIGHT
GENERAL COUNSEL
3400 MARTIN LUTHER KING BLVD.
P.O. BOX 11400
OKC, OK 73136-0400

THE LAST KNOWN ADDRESS.

Ronald Dean Lowe

RONALD DEAN LOWE

DATED: 25 DECEMBER 1997

Ronald Dean Lowe / Inm. No. 219027
Name, Prisoner ID #
P.O. Box 220

Mack H. Alford Correctional Center
Stringtown, Oklahoma 74569-0220
Address

FILED

JUL 22 1997

William B. Guthrie
Clerk, U.S. District Court

By _____ Deputy Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA

RONALD DEAN LOWE, Plaintiff(s)
(Full Name)

v.

MARCUS POGUE, Defendant(s)

JAMES THORNLEY

CIV 97-439 S
Case No.

(To be supplied
by the Clerk)

CIVIL RIGHTS COMPLAINT
PURSUANT TO 42 U.S.C. §1983

A. JURISDICTION

1) RONALD DEAN LOWE is a citizen of Oklahoma
(Plaintiff) (State)

who presently resides at Mack H. Alford Correctional Center, P.O. Box 220,
(mailing address or place of confinement)

Stringtown, Oklahoma, 74569-0220.

2) Defendant Marcus Pogue is a citizen of
(Name of first defendant)
Stringtown, Oklahoma, and is employed
(City, State)
as Medical Director, M.A.C.C. At the time the claim(s)
(Position and title, if any)

alleged in this complaint arose, was this defendant acting under the color of state law?

Yes ☒ No ☐ If your answer is "Yes", briefly explain:

The Defendant was fulfilling the duties of the Medical Director for the Mack H.

Alford Correctional Center.

3) Defendant James Thornley is a citizen of
(Name of second defendant)

Atoka, Oklahoma

and is employed

as District Atty for Atoka County
(Position and title, if any)

At the time the claim(s)

alleged in this complaint arose, was this defendant acting under the color of state law? Yes ☒ No ☐ If your answer is "Yes", briefly explain:

The Defendant was acting in the capacity of the duly elected District Attorney

for Atoka County.

[You may attach one additional page (8½" x 11") to furnish the above information for additional defendants.]

B. JURISDICTION

1) Jurisdiction is asserted pursuant to: (Check one)
☒ 42 U.S.C. §1983 (applies to state prisoners)

☐ Bivens v Six Unknown Named Agents of Fed. Bureau of Narcotics.
403 U.S. 388 (1971) and 28 U.S.C. §1331 (applies to fed. prisoners)

2) Jurisdiction also invoked pursuant to 28 U.S.C. §1343(a)(3). (If you wish
to assert jurisdiction under different or additional statutes, you may list them below.)
Class Action Litigation: F.R.C.P. Rule 23.

C. NATURE OF CASE

1) Briefly state the background of your case. On the 7th day of May 1996, the
Oklahoma Legislature established the O.S.B.I. D.N.A. Offender database under
the provisions of O.S.A., 1997 C.A.P.P., Title 22, Section 991A, and O.S.A.,
1997 C.A.P.P., Title 74, Section 150.27a.

D. CAUSE OF ACTION

1) I allege that the following of my constitutional rights, privileges or immunities have
been violated and that the following facts form the basis for my allegations: [If
necessary, you may attach up to two additional pages (8½" x 11") to explain any
allegation or to list additional supporting facts.]

A(1) Count I: Fourteenth Admendmant right to privacy.

A(2) Supporting Facts: (Include all facts you consider important, including
names of persons involved, places and dates. Describe exactly how
each defendant is involved. State the facts clearly in your own words
without citing legal authority or argument.) The Medical Director was

ordered by statute to obtain blood samples.

B(1) Count I: Fourteenth Admendment Due Proc of Law.

B(2) Supporting Facts: The statutes under examination mandate that
"certain" various prisoners will submit to the D.N.A. sampling procedure
without probable cause to belief that the prisoner has committed a crime.
(DNA is different than finger prints, voice prints, retina prints, etc.).

C(1) Count III: Fourteenth Admendment Equal Protection of the Laws.

C(2) Supporting Facts: The statutes under examination improperly create
a seperate arbitrary class subject to discriminatory treatment.

E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF

1) Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action or otherwise relating to the conditions of your imprisonment?

Yes ☐ No ☒ If your answer is "Yes", describe each lawsuit. [If there is more than one lawsuit, describe this each additional lawsuit using the same format on a blank sheet of paper which you should label "E. PREVIOUS LAWSUITS AND ADMINISTRATIVE RELIEF."]

a) Parties to previous lawsuit:
Plaintiffs: Not applicable to class action.

Defendants: Not applicable to class action.

b) Name and Location of Court and docket number Not applicable to
class action.

* - As applied to the class action.

c) Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?) Not applicable to class action.

d) Issues raised Not applicable to class action.

e) Approximate date of filing lawsuit Not applicable to class action.

f) Approximate date of disposition Not applicable to class action.

2) I have previously sought informal or formal relief from the appropriate administrative officials regarding the acts complained of in Part D. Yes ☐ No ☒ If your answer is "Yes", briefly describe how relief was sought and the results. If your answer is "No", briefly explain why administrative relief was not sought.

Not available for the putative constitutional violations.

3) I have exhausted available administrative remedies Yes ☒ No ☐ If your answer is "Yes" briefly explain the steps taken. Attach proof of exhaustion. If your answer is "No" briefly explain why administrative remedies were not exhausted.

As there are no logical available administrative remedies, the answer is yes.

F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS

1) If you are proceeding under 28 U.S.C. §1915, please list each civil action or appeal you have brought in a court of the United States, while you were incarcerated or detained in any facility, that was dismissed as frivolous, malicious, or for failure to state a claim upon which relief may be granted. Please describe each civil action or appeal. [If there is more than one civil action or appeal, describe the additional civil actions or appeals using this same format on a blank sheet of paper which you should label "F. PREVIOUSLY DISMISSED ACTIONS OR APPEALS."]

a. Parties to previous lawsuit:
Plaintiffs: Not applicable to class action.

Defendants: Not applicable to class action.

b) Name and Location of Court and docket number Not applicable to
class action.

c) Grounds for dismissal: ☐ frivolous ☐ malicious ☐ failure to state a claim upon which relief may be granted.

d) Approximate date of filing lawsuit Not applicable to class action.

e) Approximate date of disposition Not applicable to class action.

2) Are you in imminent danger of serious physical injury? ☐ Yes No ☒ If your answer is "Yes" please describe the facts in detail below without citing legal authority or argument. Not applicable to class action.

G. REQUEST FOR RELIEF

1) I believe that I am entitled to the following relief: Nominal (\$1.00)* to minimal (\$100.00)* compensatory relief; punitive relief; declaratory relief, and lastly injunctive relief. * - per person in the class.

Original Signature of Attorney (if any)

Ronald Dean Lowe
Original Signature of Petitioner

Attorney's full address and telephone number

DECLARATION UNDER PENALTY OF PERJURY

The undersigned declares (or certifies, verifies, or states) under penalty of perjury that he is the plaintiff in the above action, that he has read the above complaint and that the information contained therein is true and correct. 28 U.S.C. §1746. 18 U.S.C. §1621.

Executed at Stringtown, Oklahoma on the 30th day of June 1997
(Location) (Date)

Ronald Dean Lowe

CASE NO. :

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1998

PETITION FOR A WRIT OF CERTIORARI

RONALD DEAN LOWE,

Petitioner,

versus

MARCUS POGUE and JAMES THORNLEY,

Respondents.

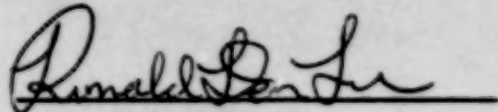
PROOF OF SERVICE

I, Ronald Dean Lowe, being duly sworn, hereby declare that on the 30th day of December 1998, pursuant to Supreme Court Rule 29, a true and correct copy of the foregoing Motion for Leave to Proceed In Forma Pauperis and Petition for a Writ of Certiorari were caused to be served on each party to the above cause or proceeding or on the attorney-of-record for the party, and on every other party or person required to be served, by depositing an envelope or similar article with the aforementioned legal papers therein contained into the United

States Postal Service (U.S.P.S.) mail container fully and properly addressed to each of the parties or persons with first-class type postage duly prepaid by the Petitioner. The names and complete addresses of the parties served are:

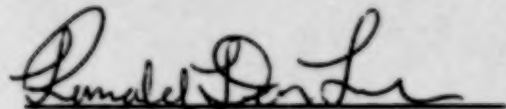
Ms. Tracy Folsom Milner; Assistant Attorney General; 4545 North Lincoln Blvd., Suite 260, Oklahoma City, Oklahoma, 73105-3498.

Respectfully submitted,



Ronald Dean Lowe
Inmate No. 219027
Pro Se Litigant
D.C.C.C.
P.O. Box 220
Hominy, OK 74035-0220

I, Ronald Dean Lowe, being duly sworn, herewith verifies under the penalty of perjury, pursuant to United States Code Annotated, Title 18, Section 1621, that the facts alleged in the current Proof of Service are true and accurate to the best of my entire knowledge and belief.



Ronald Dean Lowe

Executed at Hominy, Oklahoma on the 22nd day of December 1998.

Per Curiam

SUPREME COURT OF THE UNITED STATES

98-7591 (9) RONALD DEAN LOWE
v.
MARCUS POGUE ET AL.

98-7952 (3) RONALD DEAN LOWE
v.
OKLAHOMA DEPARTMENT OF CORRECTIONS

98-8073 (3) RONALD DEAN LOWE
v.
FEDERAL BUREAU OF INVESTIGATION

98-8082 (3) RONALD DEAN LOWE
v.
HELEN WOODALL ET AL.

ON MOTIONS FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Nos. 98-7591, 98-7952, 98-8073 and 98-8082.
Decided March 29, 1999

PER CURIAM.

Pro se petitioner Lowe seeks leave to proceed *in forma pauperis* under Rule 39 of this Court. We deny this request pursuant to Rule 39.8. Lowe is allowed until April 19, 1999, within which to pay the docketing fee required by Rule 38 and to submit his petitions in compliance with this Court's Rule 33.1. We also direct the Clerk not to accept any further petitions for certiorari nor petitions for extraordinary writs from Lowe in noncriminal matters unless he pays the docketing fee required by Rule 38 and submits his petition in compliance with Rule 33.1.

Lowe has abused this Court's certiorari and extraordinary writ processes. In November of last year and earlier

2/19

Per Curiam

this month, we invoked Rule 39.8 to deny Lowe *in forma pauperis* status. See *Lowe v. Cantrell*, 525 U. S. ____ (1999); *In re Lowe*, 525 U. S. ____ (1998) (three cases). Before these 4 denials, Lowe had filed 23 petitions, all of which were both patently frivolous and had been denied without recorded dissent. The four instant petitions for certiorari thus bring Lowe's total number of frivolous filings to 31. He has several additional filings—all of them patently frivolous—currently pending before this Court.

We enter the order barring prospective filings for the reasons discussed in *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1 (1992) (*per curiam*). Lowe's abuse of the writ of certiorari and of the extraordinary writs has been in noncriminal cases, and so we limit our sanction accordingly. The order therefore will not prevent Lowe from petitioning to challenge criminal sanctions which might be imposed on him. The order, however, will allow this Court to devote its limited resources to the claims of petitioners who have not abused our process.

It is so ordered.

JUSTICE STEVENS, dissenting.

For reasons previously stated, see *Martin v. District of Columbia Court of Appeals*, 506 U. S. 1, 4 (1992) (STEVENS, J., dissenting), and cases cited, I respectfully dissent.